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EXAMINER	
SAFOUREK, B	
ART UNIT	**PAPER NUMBER**
2603	6

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BURNS, DOANE, SWECKER & MATHIS
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DATE MAILED: 08/11/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☑ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☑ Notice of References Cited by Examiner, PTO-892. (2)
2. ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☑ Notice of Art Cited by Applicant, PTO-1449. (3)
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

Part II SUMMARY OF ACTION

1. ☑ Claims 1-14 are pending in the application.
   Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☑ Claims 1-14 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☑ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☑ been filed in parent application, serial no. 07/316,561; filed on 2/27/89.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

PTOL-326 (Rev. 2/93)

A. The Assent of Assignee is not as required by 37 CFR 3.73(b) and MPEP 324. The form at the end of chapter 300 of the MPEP (pages 300-310) may be used.

B. The drawings submitted October 15, 1993 have been approved by the draftsman.

C. The reissue oath or declaration filed with this application is defective because it fails to contain a statement that the applicant believes the original patent to be wholly or partially inoperative or invalid, as required under 37 C.F.R. § 1.175(a)(1). Paragraph 6 of the declaration states only "partially inoperative", which the original patent does not appear to be.

D. The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors relied upon, as required under 37 C.F.R. § 1.175(a)(5).

Paragraphs 8, 9, and 14 of the declaration refer to the whole of claims 11-14 and not particular errors. The declaration fails to specify the excess or deficiency in the claims (how the scope has been changed).

The reissue declaration does not comply with 37 CFR 1.175(a)(3) because it fails to specify the excesses or deficiencies in the claims, i.e., how the errors have been recitified by specifically pointing out the difference in scope between the original claims and the added reissue claims 11-14, MPEP 1414.01.

E.The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required

under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ 2d 1750, 1758 (Fed. Cir. 1989). Paragraph 13 of the declaration states when the errors were discovered but not how they arose or occurred. See Alcon v. Allergan 17 USPQ 2d 1365 (1375). The declaration needs to specify when and the manner in which the errors occurred and the circumstances under which applicant became aware of the errors.

F. Claims 1-14 are rejected as being based upon a defective reissue declaration under 35 U.S.C. § 251. See 37 C.F.R. § 1.175.

G. Applicant is reminded that the original patent has not been surrendered and must be surrendered before this application can be allowed.

H. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by

the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an enabling disclosure. The "audio" at line 11 of claim 10 and line 8 of claim 13 is not supported by the original disclosure. This error appears to have occurred in the amendment of June 27, 1991. The top of column 10 of the patent seems to only support the modulation interval "a few times greater" and not the "predetermined time interval related to" of claim 10, line 10 and "at most several times greater" of claim 13, line 8, or the "which is no longer than a few multiples" in claim 14, line 11.

I. Claims 10-14 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

J. Claims 10-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As pointed out above the "audio" signal propagation in claims 10 and 13 does not seem right as radio signals are propagated. The "said cell" in claim 12, line 2; claim 13, lines 9 and 14, and claim 14 line 7, lacks a definite antecedent. There are "cells" (plural) in the preamble of claim 10 and 13 and cells in lines 2, 4 and 6 of claim 14.

K. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office

action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Claims 10, 11, 13 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Kai in view of Borth. Kai has two transmitters on the same frequency transmitting substantially simultaneously into a cell with digitally encoded signals that are intended for mobile stations in the cell. Kai et al do not disclose the claimed modulation interval and signal reconstruction at the receivers. Borth teaches that the modulation interval should be related to what applicant calls delay spread and the use of an equalizer in the receiver to

reconstruct these delay spread signals. Since the multipath spread problems of Borth would be the same as multiple transmission problems in the system of Kai, it would have been obvious to one of ordinary skill in the art at the time the invention was made to restrict the modulation time as taught by Borth and use his receiver for multipath reduction.

L. Claim 12 is rejected under 35 U.S.C. § 103 as being unpatentable over Kai and Borth as applied to claim 10 above, and further in view of Young Jr. The transmission of Kai are not in the same cell as claim 12 requires. Young teaches having several bases (SA and SB) in one cell to increase coverage. Therefore if better coverage were needed in Kai it would have been obvious to one of ordinary skill in the art to put more than one base station of Kai in the same cell as shown by Young.

M. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

N. Any inquiry concerning this communication should be directed to B.V. Safourek at telephone number (703) 305-4364.

Benedict V. Safourek

BENEDICT V. SAFOUREK
PRIMARY EXAMINER
GROUP 263

B.SAFOUREK/TC
July 26, 1995